

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 469

Introduced by Assembly Member Swanson

February 15, 2011

An act to amend ~~Section 1197.1 of~~ Sections 98, 226, 240, 243, and 1174 of, and to add Sections 1194.3, 1197.2, 1206, and 2811 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 469, as amended, Swanson. ~~Wages: civil penalties. Employees:~~ wages.

(1) Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for violations of statutes and orders regarding payment of wages.

This bill would make it a felony if an employer is convicted of a willful violation of specified wage statutes and the total amount of unpaid wages is more than \$1,000.

(2) Existing law permits the Labor Commissioner to require an employer who has been convicted of a subsequent wage violation or who has failed to satisfy a judgment to post a bond in order to continue business operations.

This bill would extend the time required for a subsequently convicted employer to maintain a bond from 6 months to 2 years and would require that a subsequently convicted employer provide an accounting of assets, as specified, to the Labor Commissioner.

(3) Existing law requires an employer to post specified wage and hour information in a location where it can be viewed by employees.

This bill would require an employer to provide each employee, at the time of hiring, with a notice in English and in the employee's primary language that specifies the rate and the basis, whether hourly, salary, commission, or otherwise, of the employee's wages.

(4) Because this bill would create a new crime or expand the definition of a crime, it would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires that employees be paid no less than the minimum wage set by the Industrial Welfare Commission, and declares that the payment of a less wage than the minimum so fixed is unlawful. Existing law provides that any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission is subject to a specified civil penalty.~~

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Wage Theft Prevention Act of 2011.

3 SEC. 2. Section 98 of the Labor Code is amended to read:

4 98. (a) The Labor Commissioner ~~shall have the authority is~~
5 authorized to investigate employee complaints. The Labor
6 Commissioner may provide for a hearing in any action to recover
7 wages, penalties, and other demands for compensation properly
8 before the division or the Labor Commissioner, including orders
9 of the Industrial Welfare Commission, and shall determine all
10 matters arising under his or her jurisdiction. ~~It shall be~~ is within
11 the jurisdiction of the Labor Commissioner to accept and determine
12 claims from holders of payroll checks or payroll drafts returned

1 unpaid because of insufficient funds, if, after a diligent search, the
2 holder is unable to return the dishonored check or draft to the payee
3 and recover the sums paid out. Within 30 days of the filing of the
4 complaint, the Labor Commissioner shall notify the parties as to
5 whether a hearing will be held, whether action will be taken in
6 accordance with Section 98.3, or whether no further action will
7 be taken on the complaint. If the determination is made by the
8 Labor Commissioner to hold a hearing, the hearing shall be held
9 within 90 days of the date of that determination. However, the
10 Labor Commissioner may postpone or grant additional time before
11 setting a hearing if the Labor Commissioner finds that it would
12 lead to an equitable and just resolution of the dispute. *A party who*
13 *has received actual notice of a claim before the Labor*
14 *Commissioner shall, while the matter is before the Labor*
15 *Commissioner, notify the Labor Commissioner in writing of any*
16 *change in that party's business or personal address within 10 days*
17 *after the change in address occurs.*

18 It is the intent of the Legislature that hearings held pursuant to
19 this section be conducted in an informal setting preserving the
20 right of the parties.

21 (b) When a hearing is set, a copy of the complaint, which shall
22 include the amount of compensation requested, together with a
23 notice of time and place of the hearing, shall be served on all
24 parties, personally or by certified mail, or in the manner specified
25 in Section 415.20 of the Code of Civil Procedure.

26 (c) Within 10 days after service of the notice and the complaint,
27 a defendant may file an answer with the Labor Commissioner in
28 any form as the Labor Commissioner may prescribe, setting forth
29 the particulars in which the complaint is inaccurate or incomplete
30 and the facts upon which the defendant intends to rely.

31 (d) No pleading other than the complaint and answer of the
32 defendant or defendants shall be required. Both shall be in writing
33 and shall conform to the form and the rules of practice and
34 procedure adopted by the Labor Commissioner.

35 (e) Evidence on matters not pleaded in the answer shall be
36 allowed only on terms and conditions the Labor Commissioner
37 shall impose. In all these cases, the claimant shall be entitled to a
38 continuance for purposes of review of the new evidence.

39 (f) If the defendant fails to appear or answer within the time
40 allowed under this chapter, no default shall be taken against him

1 or her, but the Labor Commissioner shall hear the evidence offered
2 and shall issue an order, decision, or award in accordance with the
3 evidence. A defendant failing to appear or answer, or subsequently
4 contending to be aggrieved in any manner by want of notice of the
5 pendency of the proceedings, may apply to the Labor
6 Commissioner for relief in accordance with Section 473 of the
7 Code of Civil Procedure. The Labor Commissioner may afford
8 this relief. No right to relief, including the claim that the findings
9 or award of the Labor Commissioner or judgment entered thereon
10 are void upon their face, shall accrue to the defendant in any court
11 unless prior application is made to the Labor Commissioner in
12 accordance with this chapter.

13 (g) All hearings conducted pursuant to this chapter are governed
14 by the division and by the rules of practice and procedure adopted
15 by the Labor Commissioner.

16 (h) (1) Whenever a claim is filed under this chapter against a
17 person operating or doing business under a fictitious business
18 name, as defined in Section 17900 of the Business and Professions
19 Code, which relates to the person's business, the division shall
20 inquire at the time of the hearing whether the name of the person
21 is the legal name under which the business or person has been
22 licensed, registered, incorporated, or otherwise authorized to do
23 business.

24 (2) The division may amend an order, decision, or award to
25 conform to the legal name of the business or the person who is the
26 defendant to a wage claim, if it can be shown that proper service
27 was made on the defendant or his or her agent, unless a judgment
28 had been entered on the order, decision, or award pursuant to
29 subdivision (d) of Section 98.2. The Labor Commissioner may
30 apply to the clerk of the superior court to amend a judgment that
31 has been issued pursuant to a final order, decision, or award to
32 conform to the legal name of the defendant, if it can be shown that
33 proper service was made on the defendant or his or her agent.

34 *SEC. 3. Section 226 of the Labor Code is amended to read:*

35 226. (a) Every employer shall, semimonthly or at the time of
36 each payment of wages, furnish each of his or her employees,
37 either as a detachable part of the check, draft, or voucher paying
38 the employee's wages, or separately when wages are paid by
39 personal check or cash, an accurate itemized statement in writing
40 showing (1) gross wages earned, (2) total hours worked by the

1 employee, except for any employee whose compensation is solely
2 based on a salary and who is exempt from payment of overtime
3 under subdivision (a) of Section 515 or any applicable order of
4 the Industrial Welfare Commission, (3) the number of piece-rate
5 units earned and any applicable piece rate if the employee is paid
6 on a piece-rate basis, (4) all deductions, provided that all deductions
7 made on written orders of the employee may be aggregated and
8 shown as one item, (5) net wages earned, (6) the inclusive dates
9 of the period for which the employee is paid, (7) the name of the
10 employee and his or her social security number, except that by
11 January 1, 2008, only the last four digits of his or her social security
12 number or an employee identification number other than a social
13 security number may be shown on the itemized statement, (8) the
14 name and address of the legal entity that is the employer, and (9)
15 all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the
17 employee. The deductions made from payments of wages shall be
18 recorded in ink or other indelible form, properly dated, showing
19 the month, day, and year, and a copy of the statement ~~or a~~ and the
20 record of the deductions shall be kept on file by the employer for
21 at least three years at the place of employment or at a central
22 location within the State of California.

23 (b) An employer that is required by this code or any regulation
24 adopted pursuant to this code to keep the information required by
25 subdivision (a) shall afford current and former employees the right
26 to inspect or copy the records pertaining to that current or former
27 employee, upon reasonable request to the employer. The employer
28 may take reasonable steps to assure the identity of a current or
29 former employee. If the employer provides copies of the records,
30 the actual cost of reproduction may be charged to the current or
31 former employee.

32 (c) An employer who receives a written or oral request to inspect
33 or copy records pursuant to subdivision (b) pertaining to a current
34 or former employee shall comply with the request as soon as
35 practicable, but no later than 21 calendar days from the date of the
36 request. A violation of this subdivision is an infraction.
37 Impossibility of performance, not caused by or a result of a
38 violation of law, shall be an affirmative defense for an employer
39 in any action alleging a violation of this subdivision. An employer

1 may designate the person to whom a request under this subdivision
2 will be made.

3 (d) This section does not apply to any employer of any person
4 employed by the owner or occupant of a residential dwelling whose
5 duties are incidental to the ownership, maintenance, or use of the
6 dwelling, including the care and supervision of children, or whose
7 duties are personal and not in the course of the trade, business,
8 profession, or occupation of the owner or occupant.

9 (e) An employee suffering injury as a result of a knowing and
10 intentional failure by an employer to comply with subdivision (a)
11 is entitled to recover the greater of all actual damages or fifty
12 dollars (\$50) for the initial pay period in which a violation occurs
13 and one hundred dollars (\$100) per employee for each violation
14 in a subsequent pay period, not exceeding an aggregate penalty of
15 four thousand dollars (\$4,000), and is entitled to an award of costs
16 and reasonable attorney's fees.

17 (f) A failure by an employer to permit a current or former
18 employee to inspect or copy records within the time set forth in
19 subdivision (c) entitles the current or former employee or the Labor
20 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
21 penalty from the employer.

22 (g) An employee may also bring an action for injunctive relief
23 to ensure compliance with this section, and is entitled to an award
24 of costs and reasonable attorney's fees.

25 (h) This section does not apply to the state, to any city, county,
26 city and county, district, or to any other governmental entity, except
27 that if the state or a city, county, city and county, district, or other
28 governmental entity furnishes its employees with a check, draft,
29 or voucher paying the employee's wages, the state or a city, county,
30 city and county, district, or other governmental entity shall, by
31 January 1, 2008, use no more than the last four digits of the
32 employee's social security number or shall use an employee
33 identification number other than the social security number on the
34 itemized statement provided with the check, draft, or voucher.

35 *SEC. 4. Section 240 of the Labor Code is amended to read:*

36 240. (a) If any employer has been convicted of a violation of
37 any provision of this article, or if any judgment against an employer
38 for nonpayment of wages remains unsatisfied for a period of 10
39 days after the time to appeal therefrom has expired, and no appeal
40 therefrom is then pending, the Labor Commissioner may require

1 the employer to deposit a bond in such sum as the Labor
2 Commissioner may deem sufficient and adequate in the
3 circumstances, to be approved by the Labor Commissioner. The
4 bond shall be payable to the Labor Commissioner and shall be
5 conditioned that the employer shall, for a definite future period,
6 not exceeding ~~six months~~ two years, pay the employees in
7 accordance with the provisions of this article, and shall be further
8 conditioned upon the payment by the employer of any judgment
9 which may be recovered against the employer pursuant to the
10 provisions of this article.

11 *(b) If an order to post a bond issued against an employer under*
12 *this section remains unsatisfied for a period of 10 days after the*
13 *time to appeal therefrom has expired, and no appeal from the order*
14 *is then pending, the Labor Commissioner may require the employer*
15 *to provide an accounting of assets of the employer, including a*
16 *list of all bank accounts, accounts receivable, personal property,*
17 *real property, automobiles or other vehicles, and any other assets,*
18 *in a form and manner as prescribed by the Labor Commissioner.*
19 *An employer shall provide an amended accountings of assets, if*
20 *ordered by the Labor Commissioner to do so. If, within 10 days*
21 *after a demand for an accounting of assets, made by certified or*
22 *registered mail, the employer fails to provide an accounting, or if*
23 *the employer fails to provide an amended accounting after*
24 *receiving a demand by the Labor Commissioner to do so, the Labor*
25 *Commissioner may bring an action in the name and on behalf of*
26 *the people of the state of California against such employer to*
27 *compel the employer to furnish the accounting. An employer who*
28 *fails to provide an accounting as required by this subdivision shall*
29 *be subject to a civil penalty not to exceed ten thousand dollars*
30 *(\$10,000).*

31 ~~(b)~~

32 *(c) If, within 10 days after demand for the bond, which demand*
33 *may be made by mail, the employer fails to deposit the bond, the*
34 *Labor Commissioner may bring an action in the name and on*
35 *behalf of the people of the State of California against the employer*
36 *in a court of competent jurisdiction to compel the employer to*
37 *furnish the bond or to cease doing business until the employer has*
38 *done so. The employer has the burden of proving either that the*
39 *bond is unnecessary or that the amount demanded is excessive. If*
40 *the court finds that there is just cause for requiring the bond, and*

1 that the bond is reasonably necessary or proper to secure prompt
2 payment of the wages of the employees of the employer and the
3 employer's compliance with the provisions of this article, the court
4 may enjoin the employer, whether an individual, partnership,
5 corporation, company, trust, or association, and such other person
6 or persons as may have been or may be concerned with or in any
7 way participating in the failure to pay the wages resulting in the
8 conviction or in the judgment, from doing business until the
9 requirement is met, and make other and further orders appropriate
10 to compel compliance with the requirement.

11 *SEC. 5. Section 243 of the Labor Code is amended to read:*

12 243. (a) If, within 10 years of either a conviction for a violation
13 of this article or failing to satisfy a judgment for nonpayment of
14 wages, or of both, it is alleged that an employer on a second
15 occasion has been convicted of again violating this article or is
16 failing to satisfy a judgment for nonpayment of wages, an employee
17 or the employee's legal representative, an attorney licensed to
18 practice law in this state, may, on behalf of himself or herself and
19 others, bring an action in a court of competent jurisdiction for a
20 temporary restraining order prohibiting the employer from doing
21 business in this state unless the employer deposits with the court
22 a bond to secure compliance by the employer with this article or
23 to satisfy the judgment for nonpayment of wages.

24 (b) Upon the filing of an affidavit that, to the satisfaction of the
25 court, shows reasonable proof that an employer, for the second
26 time within 10 years, has been convicted of violating this article
27 or has failed to satisfy a judgment for the nonpayment of wages,
28 or both, the court, ~~pursuant to Section 527 of the Code of Civil~~
29 ~~Procedure,~~ may grant ~~a temporary restraining~~ *an* order that
30 prohibits the employer within 30 days from conducting any
31 business within the state; unless the employer deposits a bond
32 payable to the Labor Commissioner ~~that is conditioned on, with~~
33 ~~the condition that the employer making~~ *make* wage payments in
34 accordance with this article, or ~~upon satisfaction by that the~~
35 ~~employer of pay any unsatisfied~~ judgment for nonpayment of
36 wages, or both. The court shall order that the bond be ~~deposited~~
37 ~~on deposit with the court by the employer at any point in time that,~~
38 *Labor Commissioner at all times* within a five-year period from
39 the date of the order, *that* the employer employs more than 10
40 employees. The court shall order that the bond be in an amount

1 equal to twenty-five thousand dollars (\$25,000) or 25 percent of
2 the weekly gross payroll of the employer at the time of the posting
3 of the bond, whichever is greater, and that the term of the bond be
4 for the duration of the service of the employee who brought the
5 action, until past due wages have been paid, or until satisfaction
6 of a judgment all judgments for nonpayment of wages. *The bond*
7 *shall also be payable for wages, interest on wages and for any*
8 *damages arising from any violation of orders of the Industrial*
9 *Welfare Commission, and for any other monetary relief awarded*
10 *to an employee as a result of a violation of this code. To aid in the*
11 *enforcement of this section, upon a request by the Labor*
12 *Commissioner or an employee bringing an action pursuant to this*
13 *section, the court may additionally require the employer to provide*
14 *an accounting of assets of the employer, including a list of all bank*
15 *accounts, accounts receivable, personal property, real property,*
16 *automobiles or other vehicles, and any other assets, in a form and*
17 *manner as prescribed by the court. An employer shall provide an*
18 *amended accountings of assets if ordered by the court to do so. If,*
19 *within 10 days after a demand for an accounting of assets, which*
20 *demand may be made by certified or registered mail, the employer*
21 *shall fail to provide an accounting, or if the employer fails to*
22 *provide an amended accounting being ordered to do so, the court*
23 *may take all appropriate action to enforce its order, including the*
24 *imposition of appropriate sanctions.*

25 (c) For purposes of subdivision (b), an employer shall be deemed
26 to have been convicted of having violated this article or to have
27 failed to satisfy a judgment for the second time within 10 years if,
28 to secure labor or personal services in connection with his or her
29 business, the employer uses the services of an agent, contractor,
30 or subcontractor who is convicted of a violation of this article or
31 fails to satisfy a judgment for wages respecting those employees,
32 or both, but only if the employer had actual knowledge of the
33 person's failure to pay wages. In issuing a temporary restraining
34 order pursuant to this section, the court, in determining the amount
35 and term of the bond, shall count the agent's, contractor's, or
36 subcontractor's employees as part of the employer's total work
37 force. This subdivision shall not apply where a temporary
38 restraining order against the agent, contractor, or subcontractor as
39 an employer has been issued pursuant to subdivision (b).

(d) An employer who, for the third time within 10 years of the first occurrence, is alleged to have violated this article or to have failed to satisfy a judgment for nonpayment of wages, or both, shall be deemed by the court to have commenced a new five-year period for which the posting of a bond may be ordered in accordance with subdivision (b), except that the court may, in its discretion, require the posting of a bond in a greater amount as it determines appropriate under the circumstances.

(e) A former employee who was a party to an earlier action against an employer in which a judgment for the payment of wages was obtained, and who alleges that the employer has failed to satisfy the judgment for the payment of wages, in addition to any other available remedy, may petition the court pursuant to subdivision (b) for a temporary restraining order against the employer to cease doing business in this state unless the employer posts a bond with the court.

(f) Actions brought pursuant to this section shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence may be given by law.

(g) Nothing in this section shall be construed to impose any mandatory duties on the Labor Commissioner.

SEC. 6. Section 1174 of the Labor Code is amended to read:

1174. Every person employing labor in this state shall:

(a) Furnish to the commission, at its request, reports or information that the commission requires to carry out this chapter. The reports and information shall be verified if required by the commission or any member thereof.

(b) Allow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records

1 showing the hours worked daily by and the wages paid to, and the
2 number of piece-rate units earned by and any applicable piece rate
3 paid to, employees employed at the respective plants or
4 establishments. These records shall be kept in accordance with
5 rules established for this purpose by the commission, but in any
6 case shall be kept on file for not less than ~~two~~ three years. An
7 employer shall not prohibit an employee from maintaining a
8 personal record of hours worked, or, if paid on a piece-rate basis,
9 piece-rate units earned.

10 SEC. 7. Section 1194.3 is added to the Labor Code, to read:

11 1194.3. An employee may recover attorney's fees and costs
12 incurred to enforce a court judgment for unpaid wages due
13 pursuant to this code.

14 SEC. 8. Section 1197.2 is added to the Labor Code, to read:

15 1197.2. (a) In addition to any other penalty imposed by law,
16 an employer who willfully violates provisions of this code or orders
17 of the Industrial Welfare Commission requiring payment of the
18 legal minimum wage or the legal overtime compensation applicable
19 to an employee shall be guilty of a misdemeanor if the total amount
20 of unpaid wages is less than one thousand dollars (\$1,000), and,
21 upon conviction therefor, shall be fined not less than one thousand
22 dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or
23 imprisoned in the county jail for not more than six months, or both
24 the fine and imprisonment, and, if the total amount of unpaid wages
25 is more than one thousand dollars (\$1,000), shall be guilty of a
26 felony and, upon conviction therefor, shall be fined not less than
27 ten thousand dollars (\$10,000) nor more than twenty thousand
28 dollars (\$20,000), or imprisoned in the state prison for 16 months,
29 or two or three years, or both the fine and imprisonment, for each
30 offense. If there are multiple violations of this code or orders of
31 the Industrial Welfare Commission involving more than one
32 employee, the total amount of unpaid wages owed to all employees
33 shall be aggregated together for purposes of determining whether
34 an offense is a misdemeanor or a felony.

35 (b) In addition to any other penalty imposed by law, an
36 employer, or other person acting either individually or as an
37 officer, agent, or employee of another person, who willfully fails
38 to pay and has the ability to pay all wages due to an employee who
39 has been discharged or who has quit within 90 days of the date
40 that those wages became due is guilty of a misdemeanor if the total

1 amount of wages due is less than one thousand dollars (\$1,000),
2 and, upon conviction therefor, shall be fined not less than one
3 thousand dollars (\$1,000) nor more than ten thousand dollars
4 (\$10,000) or imprisoned in the county jail for not more than six
5 months, or both, and, if the total amount of wages due is more
6 than one thousand dollars (\$1,000), shall be guilty of a felony,
7 and upon conviction therefor, shall be fined not less than ten
8 thousand dollars (\$10,000) nor more than twenty thousand dollars
9 (\$20,000), or imprisoned in the state prison for 16 months, or two
10 or three years, or both the fine and imprisonment for each offense.
11 If there are multiple failures to pay wages involving more than
12 one employee, the total amount of wages due to all employees shall
13 be aggregated together for purposes of determining whether an
14 offense is a misdemeanor or a felony.

15 (c) This section does not apply if the employee's entitlement to
16 unpaid wages is disputed by the employer in a civil action or
17 proceeding by the Labor Commissioner unless a final judgment
18 is entered with respect to that dispute in favor of the employee.

19 (d) As used in this section, "willfully" has the same meaning
20 as provided in Section 7 of the Penal Code.

21 (e) An employer or other person guilty of a misdemeanor or
22 felony under subdivision (a) or (b) shall pay, in addition to any
23 criminal fines, restitution to the aggrieved employee or employees
24 in an amount equal to the total amount of unpaid wages.

25 SEC. 9. Section 1206 is added to the Labor Code, to read:

26 1206. Nothing in this code preempts, limits, or otherwise affects
27 the applicability of any other state or local law, ordinance,
28 regulation, requirement, policy, or standard that prohibits the
29 same or similar conduct, imposes more severe penalties for failing
30 to comply with wage-related payment requirements, requires
31 payment of wages on a more accelerated timeline, or imposes
32 penalties on a more accelerated timeline.

33 SEC. 10. Section 2811 is added to the Labor Code, to read:

34 2811. (a) (1) At the time of hiring, an employer shall provide
35 each employee, in writing in English and in the language identified
36 by the employee as his or her the primary language, a notice
37 containing the following information:

38 (A) The rate or rates of pay and basis thereof, whether paid by
39 the hour, shift, day, week, salary, piece, commission, or otherwise
40 including any rates for overtime, as applicable.

1 (B) Allowances, if any, claimed as part of the minimum wage,
2 including meal or lodging allowances.

3 (C) The regular pay day designated by the employer in
4 accordance with the requirements of this code.

5 (D) The name of the employer, including any “doing business
6 as” names used by the employer.

7 (E) The physical address of the employer’s main office or
8 principal place of business, and a mailing address, if different.

9 (F) The telephone number of the employer.

10 (G) Any other information the Labor Commissioner deems
11 material and necessary.

12 (2) When providing the notice to an employee, the employer
13 shall obtain from the employee a signed and dated
14 acknowledgment, in English and in the primary language of the
15 employee, of receipt of the notice, which the employer shall
16 preserve and maintain for three years. The acknowledgment shall
17 include an affirmation by the employee that the employee
18 accurately identified his or her primary language to the employer,
19 and that the notice provided by the employer to the employee was
20 in the language so identified, and shall conform to any additional
21 requirements established by the Labor Commissioner with regard
22 to content and form.

23 (3) The Labor Commissioner shall prepare templates that
24 comply with the requirements of paragraphs (1) and (2). Each
25 template shall be in English and one additional language. The
26 Labor Commissioner shall determine, in his or her discretion,
27 which languages to provide in addition to English, based on the
28 size of the state population that speaks each language and any
29 other factor that the Labor Commissioner shall deem relevant. All
30 templates shall be made available to employers in such manner
31 as determined by the Labor Commissioner.

32 (4) When an employee identifies as his or her primary language
33 a language for which a template is not available from the Labor
34 Commissioner, the employer may comply with this subdivision by
35 providing the employee an English-language notice or
36 acknowledgment.

37 (5) An employer shall not be penalized for errors or omissions
38 in the non-English portions of any notice provided by the Labor
39 Commissioner.

1 (b) An employer shall notify his or her employees in writing of
2 any changes to the information set forth in the notice, or in the
3 terms or conditions of employment, within seven calendar days
4 after the time of the changes, unless all changes are reflected on
5 the wage statement furnished in accordance with Section 226.

6 SEC. 11. No reimbursement is required by this act pursuant
7 to Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

15 SECTION 1. Section 1197.1 of the Labor Code is amended to
16 read:

17 ~~1197.1. (a) Any employer or other person acting either~~
18 ~~individually or as an officer, agent, or employee of another person,~~
19 ~~who pays or causes to be paid to any employee a wage less than~~
20 ~~the minimum fixed by an order of the commission shall be subject~~
21 ~~to a civil penalty as follows:~~

22 ~~(1) For any initial violation that is intentionally committed, one~~
23 ~~hundred dollars (\$100) for each underpaid employee for each pay~~
24 ~~period for which the employee is underpaid.~~

25 ~~(2) For each subsequent violation for the same specific offense,~~
26 ~~two hundred fifty dollars (\$250) for each underpaid employee for~~
27 ~~each pay period for which the employee is underpaid regardless~~
28 ~~of whether the initial violation is intentionally committed.~~

29 ~~(b) If, upon inspection or investigation, the Labor Commissioner~~
30 ~~determines that a person has paid or caused to be paid a wage less~~
31 ~~than the minimum, the Labor Commissioner may issue a citation~~
32 ~~to the person in violation. The citation may be served personally~~
33 ~~or by registered mail in accordance with subdivision (c) of Section~~
34 ~~11505 of the Government Code. The Labor Commissioner shall~~
35 ~~issue each citation in writing and shall describe the nature of the~~
36 ~~violation, including reference to the statutory provision alleged to~~
37 ~~have been violated. The Labor Commissioner promptly shall take~~
38 ~~all appropriate action, in accordance with this section, to enforce~~
39 ~~the citation and to recover the civil penalty assessed in connection~~
40 ~~with the citation.~~

1 ~~(e) (1) If a person desires to contest a citation or the proposed~~
2 ~~assessment of a civil penalty therefor, the person shall, within 15~~
3 ~~business days after service of the citation, notify the office of the~~
4 ~~Labor Commissioner that appears on the citation of his or her~~
5 ~~request for an informal hearing. The Labor Commissioner or his~~
6 ~~or her deputy or agent shall, within 30 days, hold a hearing at the~~
7 ~~conclusion of which the citation or proposed assessment of a civil~~
8 ~~penalty shall be affirmed, modified, or dismissed.~~

9 ~~(2) The decision of the Labor Commissioner shall consist of a~~
10 ~~notice of findings, findings, and an order, all of which shall be~~
11 ~~served on all parties to the hearing within 15 days after the hearing~~
12 ~~by regular first-class mail at the last known address of the party~~
13 ~~on file with the Labor Commissioner. Service shall be completed~~
14 ~~pursuant to Section 1013 of the Code of Civil Procedure. Any~~
15 ~~amount found due by the Labor Commissioner as a result of a~~
16 ~~hearing is due and payable 45 days after notice of the findings and~~
17 ~~written findings and order have been mailed to the party assessed.~~
18 ~~A writ of mandate may be taken from this finding to the appropriate~~
19 ~~superior court. The party shall pay any judgment and costs~~
20 ~~ultimately rendered by the court against the party for the~~
21 ~~assessment. The writ shall be taken within 45 days of service of~~
22 ~~the notice of findings, findings, and order thereon.~~

23 ~~(d) A person to whom a citation has been issued shall, in lieu~~
24 ~~of contesting a citation pursuant to this section, transmit to the~~
25 ~~office of the Labor Commissioner designated on the citation the~~
26 ~~amount specified for the violation within 15 business days after~~
27 ~~issuance of the citation.~~

28 ~~(e) When no petition objecting to a citation or the proposed~~
29 ~~assessment of a civil penalty is filed, a certified copy of the citation~~
30 ~~or proposed civil penalty may be filed by the Labor Commissioner~~
31 ~~in the office of the clerk of the superior court in any county in~~
32 ~~which the person assessed has or had a place of business. The~~
33 ~~clerk, immediately upon the filing, shall enter judgment for the~~
34 ~~state against the person assessed in the amount shown on the~~
35 ~~citation or proposed assessment of a civil penalty.~~

36 ~~(f) When findings and the order thereon are made affirming or~~
37 ~~modifying a citation or proposed assessment of a civil penalty after~~
38 ~~hearing, a certified copy of these findings and the order entered~~
39 ~~thereon may be entered by the Labor Commissioner in the office~~
40 ~~of the clerk of the superior court in any county in which the person~~

1 ~~assessed has property or in which the person assessed has or had~~
2 ~~a place of business. The clerk, immediately upon the filing, shall~~
3 ~~enter judgment for the state against the person assessed in the~~
4 ~~amount shown on the certified order.~~

5 ~~(g) A judgment entered pursuant to this section shall bear the~~
6 ~~same rate of interest and shall have the same effect as other~~
7 ~~judgments and be given the same preference allowed by the law~~
8 ~~on other judgments rendered for claims for taxes. The clerk shall~~
9 ~~make no charge for the service provided by this section to be~~
10 ~~performed by him or her.~~

11 ~~(h) The civil penalties provided for in this section are in addition~~
12 ~~to any other penalty provided by law.~~

13 ~~(i) This section shall not apply to any order of the commission~~
14 ~~relating to household occupations.~~